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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2641

RIN 3209-AA14

Post-Employment Conflict of Interest Restrictions; Revision of Departmental Component Designations

AGENCY: Office of Government Ethics.

ACTION: Final rule.

SUMMARY: The U.S. Office of Government Ethics (OGE) is issuing this rule to revoke the designation, for purposes of the one-year post-employment conflict of interest restriction in the United States Code, of an agency departmental component that was abolished.

DATES: Effective [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Kimberly L. Sikora Panza, Assistant Counsel, General Counsel and Legal Policy Division, Office of Government Ethics, Telephone: 202-482-9300; TTY: 800-877-8339; FAX: 202-482-9237.

SUPPLEMENTARY INFORMATION:

A. Substantive Discussion: Revocation of Departmental Component

The Director of OGE (Director) is authorized by 18 U.S.C. 207(h) to designate distinct and separate departmental or agency components in the executive branch for purposes of 18 U.S.C. 207(c). The representational bar of 18 U.S.C. 207(c) usually extends to the whole of any department or agency in which a former senior employee served in any capacity during the year prior to termination from a senior employee position. However, 18 U.S.C. 207(h) provides that whenever the Director determines that an agency or bureau within a department or agency in the executive branch exercises functions which are distinct and separate from the remaining functions of the department or agency and there exists no potential for use of undue influence or unfair advantage based on past Government service, the Director shall by rule designate such agency or bureau as a separate component of that department or agency. As a result, a former senior employee who served in a “parent” department or agency is not barred by 18 U.S.C. 207(c) from making communications to or appearances before any employees of any designated component of that parent, but is barred as to employees of that parent or of other components that have not been separately designated. Moreover, a former senior employee who served in a designated component of a parent department or agency is

barred from communicating to or making an appearance before any employee of that component, but is not barred as to any employee of the parent, of another designated component, or of any other agency or bureau of the parent that has not been designated.

Under 18 U.S.C. 207(h)(2), component designations do not apply to persons employed at a rate of pay specified in or fixed according to subchapter II of 5 U.S.C. chapter 53 (the Executive Schedule). Component designations are listed in appendix B to 5 CFR part 2641.

The Director regularly reviews the component designations and determinations and, in consultation with the department or agency concerned, makes such additions and deletions as are necessary. Specifically, the Director “shall, by rule, make or revoke a component designation after considering the recommendation of the designated agency ethics official.” 5 CFR 2641.302(e)(3). Before designating an agency component as distinct and separate for purposes of 18 U.S.C. 207(c), the Director must find that there exists no potential for use of undue influence or unfair advantage based on past Government service, and that the component is an agency or bureau, within a parent agency, that exercises functions which are distinct and separate from the functions of the parent agency and from the functions of other components of that parent.

5 CFR 2641.302(c)(1).

Pursuant to the procedures prescribed in 5 CFR 2641.302(e), one department forwarded a written request to OGE to amend its listing in appendix B. After carefully reviewing the requested change in light of the criteria in 18 U.S.C. 207(h) as implemented in 5 CFR 2641.302(c), the Director has determined to grant this request and amend appendix B to 5 CFR part 2641 as explained below.

The Department of the Interior (DOI) has requested that OGE remove the Minerals Management Service (MMS) from its list of component designations. Pursuant to DOI Secretarial Order No. 3299 dated May 19, 2010, the Secretary of the Interior divided MMS into three independent entities and MMS ceased to exist, effective that same date. Because MMS no longer exists, the Director is granting the request of the Department of the Interior and is amending the Department of the Interior listing in appendix B to part 2641 to remove MMS from the component designation list.

As indicated in 5 CFR 2641.302(f), revocation is effective 90 days after the effective date of the rule that revokes the designation. Accordingly, the component designation revocation made in this rulemaking will take effect [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Revocations are not effective as to any individual terminating senior service prior to the expiration of the 90-day period.

B. Matters of Regulatory Procedure

Regulatory Flexibility Act

As Director of OGE, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this final rule will not have a significant economic impact on a substantial number of small entities because it affects only Federal departments and agencies and current and former Federal employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to this final rule because it does not contain information collection requirements that require the approval of the Office of Management and Budget.

Unfunded Mandates Reform Act

For purposes of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. chapter 25, subchapter II), this final rule will not significantly or uniquely affect small governments and will not result in increased expenditures by State, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more (as adjusted for inflation) in any one year.

Congressional Review Act

OGE has determined that this rulemaking involves a non-major rule under the Congressional Review Act (5 U.S.C. chapter 8) and will submit a report thereon to the U.S. Senate, House of Representatives and Government Accountability Office in accordance with that law at the same time this rulemaking document is sent to the Office of the Federal Register for publication in the Federal Register.

Regulatory Planning and Review (Executive Orders 12866 & 13563)

In promulgating this final rule, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in Executive Orders 12866 and 13563. This rule has not been reviewed by the Office of Management and Budget because it

deals with agency organization, management, and personnel matters and is not “significant” for purposes of Executive Order 12866.

Executive Order 12988

As Director of OGE, I have reviewed this final rule in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

List of Subjects in 5 CFR Part 2641

Conflict of interests, Government employees.

Approved: September 14, 2015.

Walter M. Shaub, Jr.,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, OGE is amending 5 CFR part 2641 as follows:

**PART 2641—POST-EMPLOYMENT CONFLICT OF INTEREST
RESTRICTIONS**

- 1. The authority citation for part 2641 continues to read as follows:

Authority: 5 U.S.C. app. (Ethics in Government Act of 1978); 18 U.S.C. 207; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Appendix B to Part 2641 [AMENDED]

- 2. Appendix B to part 2641 is amended by removing the Minerals Management Service from the listing for the Department of the Interior.

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